

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF JOBS AND TRAINING

In the Matter of the
Denial of Job Training
Partnership Act Benefits
to Errol Ernst

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION
AND MEMORANDUM

This matter was heard by Allan W. Klein, Administrative Law Judge, on September 22, 1988, in Moorhead.

Errol Ernst, the Claimant, appeared on his own behalf. His mailing address is P.O. Box 77A, Barnesville, Minnesota 56514.

The Service Delivery Area (SDA) grant recipient, Rural Minnesota CEP, Inc., was represented by its deputy director, Boris Ochry. His mailing address is 819 Lincoln Avenue, P.O. Box 1108, Detroit Lakes, Minnesota 56501.

The State Job Training Office (an office in the Department of Jobs and Training) was represented by J. Clement Haley, State Field Representative. His mailing address is 690 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

This Report is a recommendation, not a final decision. The final decision will be made by the Governor (or his designee) after a review of the record. The final decision may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein.

STATEMENT OF ISSUE

Did Rural Minnesota CEP act appropriately when it denied Errol Ernst's application for vocational training benefits?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Errol L. Ernst is 36 years old. He resides in Barnesville, Minnesota, with his wife and four children. The parties stipulated that aside from the matters discussed below, he was otherwise eligible for participation in the Displaced Farmer Program.

2. Rural Minnesota CEP, Inc. is a non-profit corporation. The initials "CEP" stand for Concentrated Employment Program. Rural Minnesota CEP is headquartered in Detroit Lakes, with offices in Moorhead, Brainerd, Alexandria

and Bemidji. It administers a variety of federal, state and local programs, and deals with more than 10,000 individuals each year.

3. One of the programs administered by Rural Minnesota CEP is the Displaced Farmers Program, which is part of the Job Training Partnership Act. One of its components is a classroom training program. Rural Minnesota CEP receives four requests for classroom training for every one which it grants. It selects candidates for classroom training based upon its evaluation of their chances for success. Average costs for classroom training have risen to approximately \$4000 per year, which forces Rural Minnesota CEP to turn down most of the applicants.

4. On October 24, 1986, Errol Ernst first met with Bonnie Grieger, who is a counselor in the Moorhead office of Rural Minnesota CEP. They filled out a "career plan survey". Ernst wanted to become licensed as an A & P mechanic, which is a federally certified designation for persons eligible to perform mechanic work on airplanes and aircraft engines. He wanted assistance to pursue airframe classroom training between October of '86 and May of '87. Then, in May of '87, Ernst would suspend his training in order to earn money as an aerial crop sprayer. The career plan survey went on to state "Reconsider for powerplant training to complete final portion of training" between September of 1987 and May of 1988. Ex. 3-A.

5. Ernst was told when he applied for the job training benefits in the fall of 1986 that his plan covered a two-year period, and the money had to be applied for at two separate times.

6. On October 24, 1986, Bonnie Grieger certified Ernst for 27.2 weeks of "A & P mechanic -- airframe" training at Dakota Aerotech, an FAA approved facility in Fargo. She requested \$2280 for direct training costs to cover the period October 27, 1986 to May 4, 1987. Ex. 3-B.

7. Ernst began his training at Dakota Aerotech in the fall of 1986, but ran short of money because his JTPA funding covered only direct training costs, and did not include any allowances for transportation or family expenses. He began working parttime as a bartender at night and on Saturdays, but this took a toll on his studies. In addition, he was living in Barnesville, but the training was in Fargo, and so he had to commute 30 miles each way. He had trouble with a car engine, which took time and money to repair. In December of 1986, he contacted Bonnie Grieger and asked for help with child care costs and asked whether or not he could add two more months of schooling. On December 31, 1986, she executed an "Amendment to Certification" form, extending his training to a total of 35.4 weeks, from October 27, 1986 to June 30, 1987. This added an additional \$760 to the \$2280 already encumbered, for a total of \$3040. Ex. 3-D1. In addition, arrangements were made to assist with babysitting.

8. Ernst continued with school, but the difficulties imposed by going to school 40 hours a week and working 30 hours a week, plus sick children, ongoing vehicle problems, and his wife's having to work, all contributed to his missing a number of days of school. On January 21, 1987, Grieger learned from the school that Ernst had only been in school three and one-half days since January 5, and had missed three and one-half weeks of school since October. She discussed this with Ernst, who indicated that it was impossible for him to continue under the present circumstances. He decided to drop out of school, but wanted to get credit for the hours completed if he went back to school later on. He asked Grieger for help finding a fulltime job.

9. On January 26, 1987, Ernst was enrolled in an on-the-job training program as a maintenance mechanic. This was arranged through Rural Minnesota CEP, and involved Ernst working for D & H Auto Service in Barnesville.

10. From the standpoint of Rural Minnesota CEP, this change constituted a 'status change', and on or about January 26, 1987, a "JTPA Status Change and/or Termination Form" was filled out. This form indicates that as of January 25, 1987, Ernst was leaving "activity code 63", and entering "activity code 51". The first is identified as "S H Job Placement", while the second is "On-the-Job Training". Ex. 3-G.

11. On February 2, 1987, Ernst sent a letter to Dakota Aerotech, requesting that he be sent credits for coursework he had completed, "as I do intend to follow up with schooling in the future." He indicated in the letter that he was unable to complete the schooling because of financial difficulties.

12. On February 3, 1987, Jerome Rogers, Rural Minnesota CEP's finance director, sent a letter to Kenneth Rostomily at the State Board of Vocational-Technical Education. In the letter, Rogers informed Rostomily that Ernst was terminated from the classroom training component effective January 21, 1987, and that any costs incurred by Ernst after that date would be Ernst's responsibility. A copy of the letter was sent to Dakota Aerotech and to Bonnie Grieger, but Ernst himself was not sent a copy. Ex. 3-1.

13. Ernst worked at D & H Auto Service until he was offered a better job. He left D & H on March 2, 1987.

14. On or about March 2, 1987, someone at Rural Minnesota CEP filled out another "JTPA Status Change and/or Termination Form". This form indicates that Ernst was leaving "activity code 51" effective March 2, 1987, and that he was terminated from the activity. Ex. 3-H]. Ernst did not sign this form, and there is no evidence to suggest that he ever saw it. He was not told that he had been terminated, or what that implied.

15. Ernst worked at his new job, which involved piloting and welding, until the end of April. He then worked parttime at that job, and parttime spraying, until the end of August. Around the end of August, he was informed that his pilot/welder wages would be reduced, and so he quit his job. He immediately contacted Dakota Aerotech to see if they had any openings for the fall semester. There was an opening in the powerplant course.

1b. As soon as Ernst determined that there was an opening available at Dakota Aerotech, he called Rural Minnesota CEP to see if they would fund it.

He was told over the telephone that there was no money available then, but that he was "on the list". He was warned that others were ahead of him. Ernst asked if he was guaranteed of getting the money eventually, and he was told there was no guarantee. He spoke with the manager of Dakota Aerotech, and told him that he could not pay the tuition then, but that CEP would pay eventually. The manager was willing to wait.

17. On September 18, 1987, Ernst filed a formal application with Rural Minnesota CEP for training funds to go back to Dakota Aerotech.

18. On September 23, 1987, Bonnie Grieger sent a letter to Ernst, informing him that his application had been considered, but "at the present time all funds for vocational training have been committed."

19. On October 10, 1987, Ernst signed an enrollment contract at Dakota Aerotech, retroactive to September 21, 1987. The purpose of this enrollment was to complete the powerplant course.

20. Ernst continued his studies at Dakota Aerotech during the fall of 1987 and the winter of 1987-88. He only missed one and one-half days of school during the period October 28, 1987 through March 26, 1988.

21. On February 25, 1988, Ernst reapplied to Rural Minnesota CEP for training benefits. Ex. 3-M and M1.

22. On February 25, 1988, Dakota Aerotech prepared a letter of explanation setting forth the history of Ernst's enrollment there. It indicates that as of February 25, 1988, Ernst had received waivers for the general and airframe portions of the course. He had finished the oral and practical examinations for those parts of the course. He was currently attending the powerplant course, and would have to take an oral and practical exam for that in the future.

23. On March 4, 1988, Ernst contacted the Moorhead CEP office to learn of his funding status. He was told that he was not going to be funded retroactively to the fall of 1987, and that at most, he could only be funded from February 25 until school ended on March 22. This would be only \$380.

24. Ernst needed approximately \$2250 to cover the unpaid tuition from the 1987-88 training period and various incidental fees. Dakota Aerotech would not allow him to take his powerplant final exam and certification test until he paid up his account.

25. On March 11, 1988, Ernst met with Cheryl Nerby, the Moorhead Acting Operations Manager, and George Peters, who is now the Operations Manager of Rural Minnesota CEP. In that meeting, Ernst provided Peters with a summary of his dealings with Rural Minnesota CEP (Ex. 3-P1). Ernst indicated that he was unable to take the final exam at Dakota Aerotech until he paid off his indebtedness.

26. On March 23, 1988, Grieger and Nerby sent Ernst a letter, indicating that his most recent application had been reviewed, and that further classroom training assistance would not be approved. The stated reason was that he had previously received services. Ex. 3-Q. However, a contemporaneous handwritten memorandum indicates that the denial was based upon his past school performance, which was described as "many days of absenteeism". Ex. 3-P.

27. At some point in February 1988, Ernst contacted the staff of Congressman Arlan Stangeland for assistance with his JTPA funding. The staff, in turn, contacted Rural Minnesota CEP for an explanation. In a letter to Congressman Stangeland dated March 23, 1988, Rural Minnesota CEP indicated that the decision to deny the February 25, 1988 application was based on

Ernst's poor training performance record. It also indicates that Ernst had entered training after having been told there were no funds available, and now expected the agency to pay "unauthorized costs" that he had incurred. Ex. 1 and 2.

28. At some time after March of 1988, Ernst's grievance was referred to the State Job Training Office. On August 24, 1988, that office sent letters

to Ernst and Rural Minnesota CEP, indicating that Ernst had requested a review of his March 9, 1988 statement (Ex. 3-P1) because he was not satisfied with the March 23, 1988 denial of his last application (Ex. I or Ex. 3-Q). The letters give notice of a hearing to be held on September 22 in Moorhead before the undersigned Administrative Law Judge.

29. At the start of the September 22 hearing, there was discussion of the fact that the short time limits for handling grievances set forth in 29 U.S.C. sec. 1554 [S 144(a) of the Job Training Partnership Act], 20 C.F.R. S 629.52, and Minnesota JTPA Letter No. 87-3, Section G(b), had not been met. Both parties were informed that if they elected to proceed with the hearing, they would waive whatever rights they had to object to the timeliness of the hearing. Both parties agreed to go forward with the hearing.

30. in a completely separate case, involving a different applicant for job training funds, the State Job Training Office has ruled that in order to have JTPA fund training costs, the individual must be both eligible and "enrolled" in a JTPA program. Costs incurred prior to "enrollment" will not be funded -- JTPA will not reimburse persons for monies expended before they were "enrolled" in a program. Ex. 3-R.

Based upon the foregoing, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Governor and the State Job Training office have subject matter jurisdiction over this complaint pursuant to 29 U.S.C. 1554 and 20 C.F.R. 629.52.

2. The time limits contained in the above-referenced statute and regulation were not met. However, both parties waived any rights they may have had as a result of that failure.

3. Errol Ernst was not enrolled as a participant in any JTPA program after his termination on March 2, 1987. Although he applied again in September of 1987 and February of 1988, those applications were both denied.

4. Both of the denials were reasonable. They were not arbitrary, capricious, or tainted by any illegal motive.

Based upon the foregoing, the Administrative Law Judge makes the following:

RECOMMENDATION

That the denial of funds for classroom training of Errol Ernst contained in the March 23, 1988 determination of Rural Minnesota CEP (Ex. 1) be AFFIRMED.

Dated this 30th day of September, 1988.

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

The agency is requested to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped Recorded.

MEMORANDUM

This is an unfortunate situation. Ernst re-enrolled for his second year with the knowledge that there were currently no funds available, and that there was no assurance that funds would become available. Dakota Aerotech, and Ernst, took a risk that he would be funded in the future. Ernst may have been laboring under the misapprehension that he was still eligible to receive funding, but Dakota Aerotech ought to have been suspicious because it had received a letter the previous spring from Rural Minnesota CEP, indicating that Ernst's participation had been terminated and that any costs incurred by him after January of 1987 would be his responsibility. Nonetheless, both went ahead in the hope that Ernst would be funded again, and that the funding would be retroactive to the start of the school year.

Ernst's attendance during this second year was exemplary. He missed only one and one-half days during the entire period from October of 1987 through March of 1988. Considering the fact that his wife was working, that they had four children, and that he had to commute a substantial distance each day, that is a very good record. However, Rural Minnesota CEP used his prior year's attendance problems as one of the bases for denying him funds. That, plus the fact that they had already invested a substantial amount in his family, was the reason for denial.

The unfortunate effect of the denial, however, is that he cannot take the final examinations which are required for FAA certification, and without FAA certification, he cannot get the kind of high-paying job that he has been trained to perform. He has already obtained part of the necessary FAA certification (airframe), and has completed all but four clock hours of the classroom training for the other half (powerplant).

It is understandable that Dakota Aerotech wants to be paid for its services before it will allow him to take the final examination needed for his FAA certification.

There was no specific statute or rule cited that requires that a person be "enrolled" as a participant in a program prior to obtaining services to be

funded by the program. Instead, it appears to be just assumed in the federal regulations governing these programs. For example, 20 C.F.R. 629.1(b) requires recipient agencies to ensure that an individual "enrolled in a JTPA program" meets the requirements applicable to programs funded under the specific section or title of the act under which the participant "is enrolling". Similarly, subparagraph (2) of that rule requires that an individual "be enrolled" within 45 days of the date of application, or a new application must be taken. 20 C.F.R. 6239.35(c) requires the Governor to ensure that records are maintained "of each participant's enrollment in a JTPA program" in sufficient detail to demonstrate compliance with relevant

eligibility criteria. 20 C.F.R. S 630.1(b)(1) requires that not less than 40 percent of the certain Title II funds be expended for services to eligible youth, who are either 14 or 15 years of age 'and enrolled" pursuant to a specific section of the act.

In summary, the act presumes that the concept of enrollment will be applied in a common sense and ordinary fashion. Neither the statute nor the rules provide any special definition or technical explanation of the concept. Under an ordinary meaning, Errol Ernst was not properly enrolled in a JTPA program when he went back to school and incurred the tuition expense.

A.W.K.

